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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/533,318	06/10/2005	Fabrizio Pucci	4462-14	5302
23117 7590 12/28/2006 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203			EXAMINER LEYSON, JOSEPH S	
			ART UNIT 1722	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		12/28/2006	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/533,318

Applicant(s)

PUCCI ET AL.

Examiner

Joseph Leyson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24-52 is/are pending in the application.
- 4a) Of the above claim(s) 52 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24-51 is/are rejected.
- 7) ☒ Claim(s) 31-37, 39, 41, 43, 45, 47, 49 and 50 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152,

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 04/29/2005.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

1. Applicant's election of Group I, Species C, drawn to fig. 14 and claims 24-31, 33, 34, 36 and 38-51, in the reply filed on October 19, 2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. In view of the allowable subject matter indicated below, the further species restriction of Group I in the Office Action mailed on September 20, 2006 is withdrawn. However, the group restriction (namely Groups I and II) in the Office Action mailed on September 20, 2006 is NOT withdrawn. In view of the above noted withdrawal of the restriction requirement, applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

Once a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

3. Claim 52 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.
4. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one

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or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Objections

5. Claims 31-37, 39, 41, 43, 45, 47, 49 and 50 are objected to because of the following informalities:

in claim 31, "wallbetween" should be changed to --wall between-- for proper idiomatic language;

in claim 37, "elementand" should be changed to --element and-- for proper idiomatic language.

Appropriate correction is required.

6. Claim 50 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

Claim 50 only further recites limitations for the extruder which is not positively claimed. The instant claims are to a device for removing doses which includes elements that are positively claimed relative to the extruder, but limitations which further define the extruder do NOT further define the device for removing doses.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the

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art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

8. Claims 24-50 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 24 recites that the severing edge is more advanced than the receptacle in an intended direction of movement of the severing element. However, the specification (i.e., p. 4, lines 11-19) discloses that the back wall 12, side wall 13 and the severing element 14 (which includes the severing edge 14a) form the receptacle 15. Thus, the severing edge 14a defines the receptacle and cannot be more advanced than itself. Note that, in all the embodiments of the specification, the receptacle is formed by the severing element and that the disclosure does NOT disclose the severing edge being more advanced than the receptacle.

Note that if the claim language of the severing edge being more advanced than the receptacle in the intended direction of movement of the severing element is removed from claim 24, then claim 51 will be objected under 37 CFR 1.75 as being a substantial duplicate of claim 25.

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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10. Claims 24-51 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 24 and 51 recite "A device for removing doses ..., said removal element comprising ..." which is indefinite as to its metes and bounds. It cannot be clearly determined what elements are being positively claimed. The examiner suggests the following amendments to claims 24 and 51: "A device for removing doses of plastic material from an extruder, [by way of] the device comprising at least one removal element which is movable with respect to said extruder for removing a dose and is provided with a receptacle for receiving [a] the dose removed from ...".

In claim 36, "said cutting element" lacks antecedent basis making it unclear to what it refers. The examiner suggest changing it to --said severing element--.

Claims 38 and 39 have antecedent basis correspondence issues making the claims unclear. In each claim, the examiner suggest inserting --said-- after "supports" (line 3) and changing "cutting" (line 5) to --severing--.

In claims 40-47, "said cutting edge" lacks antecedent basis making it unclear to what it refers. The examiner suggest changing it to --said severing edge--. Note that some claims have multiple occurrences.

In claim 50, "the nozzle" lacks antecedent basis making it unclear to what it refers. The examiner suggest changing it to --a nozzle--.

Claim Rejections - 35 USC § 102

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11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 24-27, 29, 30 and 51 are rejected under 35 U.S.C. 102(b) as being anticipated by Cuff (U.S. Patent 3,792,950).

Cuff (U.S. Patent 3,792,950) teaches a device for removing doses of plastic material from an extruder 2 by way of at least one removal element 160 which is movable with respect to said extruder 2 and is provided with a receptacle (i.e., figs. 7-10) for receiving a dose removed from the outflow orifice of said extruder 2, said removal element comprising a severing element that is adapted to cut into the plastic material dispensed by said extruder 2 along a severing edge 174 that advances through the material from one side of said orifice to the other, said receptacle being shaped so as to be able to accommodate said dose and to allow expulsion thereof substantially in the direction of said severing edge 174, wherein said severing edge 174 is more advanced than said receptacle in an intended direction of movement of said severing element, wherein said removal element 160 is provided with an inlet passageway, which is partially bound by said severing edge 174 and through which said dose is receivable into said receptacle, and an outlet passageway, transversely oriented with respect to said severing edge 174 and through which said dose may be expelled from said receptacle (i.e., figs. 7-10), wherein said severing element is so shaped as to interact with said dose to an extent not significantly greater than said severing edge 174, (i.e.,

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figs. 7-10), wherein said severing element is constituted by a blade in which said severing edge 174 is substantially perpendicular to the direction of advancement of said blade with respect to said extruder 2 and is suitable to cut the plastic material along a surface that is tangent to the rim of the orifice of said extruder 2 (i.e., figs. 7-10), wherein said removal element is supported in a manner that allows adjustment with respect to said extruder 2 in order to allow to keep said severing edge 174 on the plane of tangency with the rim of the orifice of the extruder 2 (i.e., figs. 7-10; col. 5, line 56, to col. 6, line 6), wherein said removal element comprises an expelling device for expelling said dose from said receptacle (i.e., figs. 1 and 11; col. 9, lines 40-65).

13. Claims 24-27, 29, 30 and 51 are rejected under 35 U.S.C. 102(b) as being anticipated by Kleeb (U.S. 3,324,510).

Kleeb (U.S. 3,324,510) teaches a device for removing doses 20 of plastic material from an extruder 1, 2 by way of at least one removal element 7, 8 which is movable with respect to said extruder 1, 2 and is provided with a receptacle (i.e., fig. 4) for receiving a dose 20 removed from the outflow orifice 4 of said extruder 1, 2, said removal element comprising a severing element 8 that is adapted to cut into the plastic material dispensed by said extruder 1, 2 along a severing edge (i.e., figs. 4 and 4a) that advances through the material from one side of said orifice 4 to the other, said receptacle being shaped so as to be able to accommodate said dose and to allow expulsion thereof substantially in the direction of said severing edge (i.e., figs. 4 and 4a), wherein said severing edge is more advanced than said receptacle in an intended direction of movement of said severing element (i.e., fig. 4), wherein said removal

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element 7, 8 is provided with an inlet passageway, which is partially bound by said severing edge and through which said dose 20 is receivable into said receptacle, and an outlet passageway, transversely oriented with respect to said severing edge and through which said dose may be expelled from said receptacle (i.e., figs. 4 and 4a), wherein said severing element 8 is so shaped as to interact with said dose 20 to an extent not significantly greater than said severing edge (i.e., fig. 4), wherein said severing element 8 is constituted by a blade in which said severing edge is substantially perpendicular to the direction of advancement of said blade with respect to said extruder 1, 2 and is suitable to cut the plastic material along a surface that is tangent to the rim of the orifice of said extruder 1, 2 (i.e., figs. 4 and 4a), wherein said removal element 7, 8 is supported in a manner that allows adjustment with respect to said extruder 1, 2 in order to allow to keep said severing edge on the plane of tangency with the rim of the orifice of the extruder 1, 2 (i.e., col. 2, lines 6-10), wherein said removal element 7, 8 comprises an expelling device for expelling said dose 20 from said receptacle (i.e., fig. 7; col. 2, lines 11-20 and 35-45).

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

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the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

16. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over either Cuff (U.S. Patent 3,792,950) or Kleeb (U.S. 3,324,510), in view of Pandur (U.S. Patent 3,972,666).

Cuff (U.S. Patent 3,792,950) and Kleeb (U.S. 3,324,510) disclose the device substantially as claimed, as mentioned above, except for the severing element including a metallic wire that is substantially perpendicular to the advancement direction of the severing element with respect to the extruder.

Pandur (U.S. Patent 3,972,666) discloses a severing element 36 including a metallic wire 39 that is substantially perpendicular to an advancement direction of the severing element 36 with respect to a nozzle 29 of an extruder 1.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to modify the device of either Cuff (U.S. Patent 3,792,950) or Kleeb (U.S. 3,324,510) such that the severing element includes a metallic wire that is substantially perpendicular to the advancement direction of the severing element with respect to the extruder because such a wire would provide an alternate cutting means known in the extrusion art to be capable of cutting extrudate, as disclosed by Pandur

(U.S. Patent 3,972,666). Thus, the wire would provide an art recognized equivalent to the blade for the same purpose of cutting extrudate (see MPEP 2144.06).

Allowable Subject Matter

17. Claims 31-50 would be allowable if rewritten to overcome the objection(s) and/or the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

18. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record does not teach or reasonably suggest a device as recited by instant claims 31-37, 39, 41, 43, 45, 47, 49 and 50, particularly further wherein the removal element includes the back wall, the severing element that is fixed to the side of the back wall, and the movable side wall on the opposite side with respect to the severing element, the severing element, the back wall and the movable side wall forming the receptacle, the side wall being controlled by the actuation device for actuation of said side wall between a first end position and a second end position; or a device as recited by instant claims 38, 40, 42, 44, 46 and 48, particularly the device for feeding doses of plastic material to the molding carousel, which further includes the disk that rotates synchronously with the carousel and peripherally supports the at least one element for removing the doses, wherein the orifice for the exit of the doses has the rim that lies on the surface that is substantially tangent to the plane of rotation of the severing edge.

Conclusion

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19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Cunningham (U.S. Patent 3,128,500), Alieri (U.S. Patent 4,518,336), White (U.S. Patent 4,968,469), Ingram (U.S. Patent 5,456,587), Rote et al. (U.S. Patent 5,603,964) and Dennis et al. (U.S. Patent 6,422,854) are cited as of interest to show the state of the art.

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph Leyson whose telephone number is (571) 272-5061. The examiner can normally be reached on M-F 9AM-5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gupta Yogendra can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


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12/21/06